D.P.U. 92-1A-B

Application of Boston Edison Company:

(1) under the provisions of G.L. c. 164, § 94G and the Company's tariff, M.D.P.U. 592-A, for approval by the Department of Public Utilities of a change in the quarterly fuel charge to be billed to the Company's customers pursuant to meter readings in the billing months of February, March, and April 1992;

(2) for approval by the Department of rates to be paid to Qualifying Facilities for purchases of power pursuant to 220 C.M.R. §§ 8.00 et seq. The rules established in 220 C.M.R. §§ 8.00 et seq. set forth the filings to be made by electric utilities with the Department, and implement the intent of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978; and

(3) under the provisions of G.L. c. 164, § 94G for approval by the Department of the actual unit by unit and system performance of the Company with respect to each target set forth in the Company's approved performance program.

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ORDER ON MOTION BY BOSTON EDISON COMPANY
FOR CLARIFICATION AND RECONSIDERATION

I. INTRODUCTION

On April 15, 1993, the Department of Public Utilities ("Department") issued its decision in Boston Edison Company, D.P.U. 92-1A-A ("Order"), concerning the review of the generating unit performance of Boston Edison Company ("BECo" or "Company") from November 1, 1990 to October 31, 1991. In the Order, the Department found that imprudent actions for which the Company was responsible caused (1) a total of 19 days of extension of the eighth refueling outage ("RFO-8") at the Company's Pilgrim nuclear power station ("Pilgrim")[1], (2) a 12-day extension of the major overhaul at New Boston 1, and (3) a nine-day extension of the major overhaul at New Boston 2. Order at 48. Consequently, the Department ordered the Company to refund in its next fuel charge filing any incremental replacement power costs that resulted from those imprudent actions. Id.

On May 3, 1993, the Company filed with the Department a "Motion for Clarification and Reconsideration" ("Company Motion")[2] and a "Motion for Extension of Appeal Period."[3]

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[1] The Department found that the total 19-day extension of RFO-8 at Pilgrim was a result of the combination of four operating events: the failure of the drywell head bolt washers which resulted in a nine-day extension of RFO-8; the failure of a partition plate in the "A" Reactor Building Closed Cooling Water heat exchanger which resulted in a five-day extension of RFO-8; the failure of the reactor building crane which resulted in a two-day extension of RFO-8; and a dropped fuel bundle which resulted in a three-day extension of RFO-8. Order at 17, 20, 22, 26.

[2] In its Motion, the Company appears to request clarification, reconsideration and recalculation of the Department's Order findings interchangeably. In setting forth its interpretation of the Department's standards for reconsideration and clarification, the Company states it "believes that it is appropriate for the Department to clarify its orders when the Department has miscalculated a numerical quantity which has an impact on the decision" (Company Motion at 1). The Company cites no authority for

(continued…)

The Company seeks only reconsideration of the Department's findings regarding the number of days of replacement power costs it disallowed in connection with delays in Pilgrim's RFO-8 critical path as a result of work on the drywell head bolt washers and on the "A" Reactor Building Closed Cooling Water heat exchanger ("`A' heat exchanger") (Company Motion at 2-3). In addition, the Company seeks clarification of the standard of review and reconsideration of the findings of imprudence relative to delays in returning Pilgrim to service following RFO-8 due to the failure of the reactor building crane bearing and the refueling bridge grapple (id.).

On May 7, 1993, the Attorney General of the Commonwealth ("Attorney General") submitted his Opposition to Boston Edison's Motion for Clarification and Reconsideration ("Attorney General Opposition"). The Attorney General argues that the record evidence fully supports the Department's findings of imprudence but contends that the problem with the drywell head bolt washers resulted in a seven-day extension of RFO-8 rather than a nine-day extension of the outage as found by the Department (Attorney General Opposition at 1-2).

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[2](…continued)
its belief which is inconsistent with the Department's standard for clarification but seems to characterize the Department's standard for recalculation. See Sections II.B and II.C. Since the Department has separate standards for reconsideration, clarification and recalculation, companies should clearly set forth the nature of their requests and the grounds therefore. In the present case, the Company has failed to explicitly state the nature of its request and the grounds therefore. Thus, the Department will evaluate the Company's request by what the Company appeared to intend as determined by the context of the issue.

[3] On May 5, 1993, the Department granted an extension of the judicial appeal period to 20 days following the issuance of the Department's decision regarding the Company's Motion for Clarification and Reconsideration.

II. STANDARD OF REVIEW

A. Reconsideration

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision after review and deliberation. Western Massachusetts Electric Company, D.P.U. 92-8C-B at 4 (1993); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Essex County Gas Company, D.P.U. 87-59-A at 2 (1988); Western Massachusetts Electric Company, D.P.U. 85-270-C at 12-13 (1987); Hutchinson Water Company, D.P.U. 85-194-B at 1 (1986).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Western Massachusetts Electric Company, D.P.U. 92-8C-B at 5; Boston Edison Company, D.P.U. 90-270-A at 3; Western Massachusetts Electric Company, D.P.U. 84-25-A at 6-7 (1984); Boston Edison Company, D.P.U. 1720-B at 12 (1984); Hingham Water Company, D.P.U. 1590-A at 5-6 (1984); Boston Edison Company, D.P.U. 1350-A at 4 (1983); Trailways of New England, Inc., D.P.U. 20017, at 2 (1979); Cape Cod Gas Company, D.P.U. 19665-A at 3 (1979).[4] Alternatively, a motion for reconsideration may be based on the argument that the

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[4] The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. See, generally, Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987).

Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989), citing Western Union Telegraph Company, D.P.U. 84-119-B (1985).

B. Clarification

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Whitinsville Water Company, D.P.U 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, at 2 (1976) ("Fitchburg").

C. Recalculation

The Department grants motions for recalculation in instances where an order contains a computational error or if the schedules in the order are inconsistent with the findings and conclusions contained in the body of the order. Western Massachusetts Electric Company, D.P.U. 89-255-A at (1990); Essex County Gas Company, D.P.U. 87-59-A at 1-2 (1988).

D. Generating Unit Performance Review

For the purpose of reviewing the Company Motion in this proceeding, it is appropriate to restate the Department's standard of review for performance reviews. If an electric company fails to meet system performance targets approved by the Department, the company

must present evidence explaining such variance at the next fuel charge proceeding. G.L. c. 164, § 94G(a). Specifically, the Department must

> make a finding whether the company failed to make all reasonable or prudent efforts consistent with accepted management practices, safety and reliability of electric service and reasonable regional power exchange requirements to achieve the lowest possible overall costs to the customers of the company for the procurement and use of fuel and purchased power included in the fuel charge. If the department finds that the company has been unreasonable or imprudent in such performance, in light of the facts which were known or should reasonably have been known by the company at the time of the actions in question, it shall deduct from the fuel charge proposed for the next quarter or such other period as it deems proper the amount of those fuel costs determined by the department to be directly attributable to the unreasonable or imprudent performance.

G.L. c. 164, § 94G(a).

The Department's standard for determining the prudence of a company's actions also appears in G.L. c. 164, § 94G(b).[5] If a company expects to recover its costs, including its purchased power costs incurred as a result of unit outages, the company must "demonstrate the reasonableness of energy expenses sought to be recovered through the fuel charge." Id. That section requires the Department to disallow such costs if (a) the company fails to sustain its burden of proof that its actions were reasonable, or (b) despite the company's making a prima facie case, the Department concludes that the company's actions were imprudent and

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[5] "The statutory context … is provided by the authority granted the Department in G.L. c. 164, § 94G(a), to deduct from a fuel charge proposed for the next quarter the amount of those fuel costs determined to be directly attributable to a company's unreasonable or imprudent performance; and, in § 94G(b), to deduct that amount determined to be directly attributable to a company's defective operation of a unit. Each determination is to be made in light of the facts which the company knew or should reasonably have known at the time of the actions in questions." Boston Edison Company v. Department of Public Utilities, 393 Mass. 244, 245 (1984).

proximately caused the fuel costs or incremental replacement power costs whose recovery is sought. G.L. c. 164, § 94G.

III. GROUNDS FOR CLARIFICATION AND RECONSIDERATION

A. Drywell Head Bolt Washers

1. Background

The Company's first attempt to perform an Integrated Leak-Rate Test ("ILRT") during the latter stages of RFO-8 was unsuccessful, because on July 28, 1991, a leak was detected in the drywell head flange. Order at 20, citing Exh. BE-ESK-1, at 31. The leakage was caused by the failure of the drywell head bolt washers. Id. In the Order, the Department found that failure of the drywell head bolt washers resulted from (1) the Company contractor's imprudent action (the washers had been manufactured from an improper material), and (2) the installation of the washers in an improper position (i.e., upside-down). Id. at 22. The Department also found that the failure of the washers resulted in a nine-day extension of RFO-8, from July 28, 1991 to August 6, 1991. Id.

2. Company's Position

The Company does not challenge the finding of imprudence,[6] but argues that the resulting extension of RFO-8 was only four days and not nine days as the Department found in the Order (Company Motion at 4). The Company seeks reconsideration of this finding "because [a] review of the record and the Department's stated basis for disallowance of replacement power costs indicates that the Department has incorrectly calculated the number of days of delay attributable to the alleged incidence of imprudence" (id. at 2).

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[6] The Company notes that it reserves its right to argue against the findings of imprudence in the event it files an appeal from the Order (Company Motion at 2, n.1).

The Company states that according to the "as-planned" critical path of the refueling outage, the activity known as Start-Up Preparation follows the ILRT (Company Motion at 4, citing Exh. BE-ESK-69). The Company further explains that during repairs to the drywell head bolt washers, the Company was able to initiate the Start-Up Preparation activities and perform them in parallel to the washer repairs and ILRT, rather than waiting until the ILRT was completed (id.). Therefore, according to the Company, the Start-Up Preparation activities were completed much sooner than originally was planned following the successful performance of the ILRT (id., citing Exh. BE-ESK-70). The Company asserts that the true effect of the failure and replacement of the washers on the actual duration of the refueling outage thus was less than the total nine-day delay of the ILRT found by the Department in the Order (id.). According to the Company, the failure of the washers resulted in only a four-day extension of the critical path of the overall outage (id.).

3. Attorney General's Position

The Attorney General disagrees with the Company's claim that only a four-day extension of RFO-8 is attributable to the failure of the drywell head bolt washers (Attorney General Opposition at 2). The Attorney General notes that the record clearly shows that the Start-Up Preparations commenced once the ILRT was finished on August 6, 1991, and that, consequently, these activities were not performed in parallel with repairs of the drywell head, as the Company asserts (id., citing Exh. BE-ESK-70). According to the Attorney General, the failure of the drywell head bolt washers actually resulted in a seven-day extension of the RFO-8 schedule: four days to replace the washers and three days to redo the ILRT (id., citing Tr. 1, at 115-117).

4. Analysis and Findings

The Company seeks reconsideration of the Department's findings regarding the duration of the outage extension that resulted from the failure of the drywell head bolt washers. However, the Company has failed to bring to light any previously unknown or undisclosed facts concerning the failure of the drywell head bolt washers that would have a significant impact on the Department's decision. The Company also has failed to establish that the Department's findings on this issue were the result of mistake or inadvertence. The Company's request for reconsideration of this matter is merely an attempt to reargue an issue already considered and decided.[7] Therefore, the Company has failed to meet the Department's standard for reconsideration.

B. "A" Heat Exchanger

1. Background

On May 24, 1991, an inspection of the "A" heat exchanger revealed a failure of the partition plate. Order at 17, citing Exh. BE-ESK-24, at 32. The partition plate failure resulted from an error in an engineering design calculation and consequent design weakness. Id., citing Exh. BE-ESK-48, at 2. The Department found in the Order that the Company was responsible for its contractor's design error. Id. at 19-20. The Department also found that this imprudent action resulted in a five-day extension of the critical path of RFO-8. Id.

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[7] The Department notes that the Attorney General's position is also without merit. The Attorney General suggests, based on the oral testimony of the Company's witness, that the drywell head bolt washers' failure resulted in a seven-day extension of RFO-8. The record, however, shows that the Company witness' testimony on this point was very general and did not include any reference to specific dates of RFO-8 extensions (Tr. 1, at 115-117). However, the written documents submitted by the Company and entered into the record indicate that the actual extension of RFO-8 was nine days (Exhs. BE-ESK-1, at 31; BE-ESK-24, at 48-49; BE-ESK-70).

2. Company's Position

The Company does not challenge the Department's finding of imprudence (see footnote 6, above), but argues that the actual extension of RFO-8 was only five hours and not five days as the Department found in the Order (Company Motion at 5). The Company seeks reconsideration of this finding "because [a] review of the record and the Department's stated basis for disallowance of replacement power costs indicates that the Department has incorrectly calculated the number of days of delay attributable to the alleged incidence of imprudence" (id. at 2).

The Company maintains that the Department has overstated the effect of the "A" heat exchanger repairs on the duration of the outage (id. at 5). The Company argues that "if the `A' heat exchanger repair had not been required, … then [RFO-8] would have been shortened in duration by only five hours and not five days as found by the Department" (id.). In support of this statement, the Company refers to the full list of the activities actually performed during RFO-8 (id., citing Exh. BE-ESK-73, Attachment 3, at 8). According to the Company, this exhibit "clearly demonstrates that the completion of the Loop `A' electrical work (activity K.E. 3H), which was the underlying critical path of the `A' heat exchanger work, occurred at 1200 hours on June 9, 1991, five hours before the completion of the `A' heat exchanger repair activity (activity K.E. 3E), which occurred at 1700 hours on June 9, 1991. See also RR-AG-5" (id.).

3. Attorney General's Position

The Attorney General disagrees with the Company's claim that only a five-hour extension of RFO-8 resulted from the failure of the "A" heat exchanger (Attorney General Opposition at 3). The Attorney General argues that the Company "disputes the Department's

finding on grounds raised for the first time in the Company Motion," and asserts that the Department should dismiss BECo's request to reconsider the finding regarding the failure of the "A" heat exchanger in accordance with the principles set forth in Fitchburg (id.).[8]

The Attorney General notes that BECo's witness admitted during the hearing that the "A" heat exchanger problem resulted in a five-day extension of the RFO-8 schedule and that the Company, until filing its Motion, "had never debated this issue" (id. at 3-4, citing Tr. 1, at 70-71). The Attorney General asserts that it is too late now for BECo to refocus its argument (id. at 4).

4. Analysis and Findings

The Company seeks reconsideration arguing that the "A" heat exchanger repairs resulted in a five-hour rather than a five-day extension of RFO-8. The Company has presented no new facts which were previously unknown or undisclosed to warrant the Department's reconsideration of the extent of the outage due to the "A" heat exchanger repairs. Although the Company argues that reconsideration is warranted because of a Department mistake, the Company does not point to any specific error in the Order but, instead, has presented only new arguments. The presentation of new arguments is not

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[8] In Fitchburg at 2, the Department stated that a motion for reconsideration requires the Department to re-examine the record for the express purpose of substantively modifying a decision made after review and deliberation. The Department, however, admonished that such a motion should not be the occasion for the reargument of issues previously decided by the Department inasmuch as the appellate court is the proper forum for such argument. Id.

appropriate on a motion for reconsideration.[9] Therefore, the Company has failed to meet the reconsideration standard.

C. Reactor Building Crane

1. Background

On May 4, 1991, during disassembly of the reactor at the beginning of RFO-8, the reactor building crane failed because the bearings inside the sheaves of the lower pulley block were worn, and the sheaves of the upper pulley block had seized. Order at 23, citing Exh. BE-ESK-36. The root cause of the crane failure was found to be a lack of lubricant in the bearings. Id., citing RR-AG-4, at 3. The crane's specifications require graphite lubrication to be provided by a stick of graphite located within each bearing assembly. Id. The Company determined that the graphite stick had been used up, causing the bearings to seize and damaging several bearings and sheaves within the upper pulley block. Id. at 23-24.

In the Order, the Department found that the Company should have estimated the useful lifetime of the bearings with graphite lubrication and used that information to develop a maintenance and replacement schedule. Id. at 25. In the event that the Company was unable to develop such an estimate, the Department determined that the Company should have compared the costs of occasional inspections of the bearing internals with the costs of any

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[9] Although the Department need not address the Company's new arguments, we note even if these new arguments were considered, the totality of the evidence would lead to the same conclusion. The Company failed to sustain its burden of proving that the "A" heat exchanger repairs resulted in a five-hour rather than a five-day extension of RFO-8. Thus, even if the Department were to consider the Company's new arguments, the Company would still fail to sustain its burden of establishing that its actions were reasonable.

consequential damages that might have resulted from the bearing failure and based any decision not to conduct such inspections on that comparison. Id.

The Department concluded that the Company failed to assess the working life of the reactor building crane bearings, and that the failure to take all reasonable actions ultimately resulted in the failure of the crane's sheave bearings during RFO-8. Id. at 26. The Department also found that a two-day extension of RFO-8 was attributed directly to this imprudent action. Id.

2. Company's Position

The Company challenges the Department's finding of imprudence regarding the reactor building crane bearing failure (Company Motion at 5). The Company asserts that the Order does not identify the record evidence which supports the findings of imprudence (id. at 3). The Company further maintains that the Department has held the Company to the "inappropriately high standard of absolute liability" (id.).

The Company asserts that the Department must reconsider its finding of imprudence for the following reasons. First, according to the Company, the record clearly demonstrates that the lubrication system was an enclosed system which required complete disassembly for inspection (Company Motion at 6, citing Tr. 1, at 136-137). Second, the Company asserts that it followed its inspection and crane preparation procedures prior to using the crane (id., citing Tr. 1, at 40-43, 128-133). Third, the Company states that the record shows that the crane functioned normally up to the moment of its unexpected failure (id., citing Tr. 1, at 31). Finally, the Company reiterates that the crane expert who investigated the failure determined that the failure was sudden in nature (id., citing Exh. BE-ESK-36).

The Company claims that in the Order, the Department "developed a theory of imprudence which was not discussed on the record and which the Company had no opportunity to address during the hearings" (id. at 7). The Company asserts that the Department's decision established and applied a standard of absolute liability, by which a utility is responsible for any outage delay due to any equipment failure, regardless of fault and regardless of the type of equipment (id.).

3. Attorney General's Position

The Attorney General asserts that BECo's request for reconsideration of the issue should be dismissed in accordance with the standard articulated in Fitchburg (i.e., that a motion for reconsideration is not an opportunity to reargue issues) (Attorney General Opposition at 6). The Attorney General notes that the Department's findings are fully consistent with the four points that are mentioned by the Company as the grounds for reconsideration (id. at 5).

4. Analysis and Findings

The Company's assertion that the Department should reconsider and clarify this finding of imprudence hinges on the Company's claim that the evidence in the record demonstrates that the reactor building crane bearing failure was unforeseeable and that the Company's maintenance practices regarding the crane were prudent. However, the Company has not presented any previously unknown or undisclosed facts regarding this issue. First, the Department did consider the fact that the lubrication system was an enclosed system which required complete disassembly for inspection (Order at 24-25; Tr. 1, at 136-137). Second, the Department did recognize that the Company had followed its inspection and crane preparation procedures prior to using the crane (Order at 23-25; Exhs. BE-ESK-1, at 22;

BE-ESK-35; Tr. 1, at 40-43, 128-132). Third, the Department did recognize that the crane had functioned normally up to the moment of its failure (Order at 23-25; Exh. BE-ESK-36). Finally, the Department did reach its decision after considering the record information regarding the interview with the crane "expert" (Exh. BE-ESK-36; Tr. 1, at 30-46, 127, 135-137). However, in the Order, the Department found that those factors did not justify the Company's failure to inspect the bearing, or to make an assessment of the useful life of the crane bearing lubrication system. Order at 25-26. Instead, the Department determined that, because it was not possible to inspect the bearing lubrication system without its complete disassembly and because a potential existed for a sudden failure of the bearing without any advance indication, it would have been both reasonable and necessary for the Company to have estimated the useful life of the bearing lubricant and to develop an appropriate maintenance and replacement schedule. Id. at 25. The Company's argument, therefore, is not based on any new evidence previously unknown or undisclosed to the Department or on the Department's mistake or inadvertence. Therefore, the Company only has reargued issues already determined.

Moreover, the Department has not established an inappropriate or new standard of liability for the review of generating unit performance, as asserted by the Company. Nonetheless, the Department will clarify the standard to which it held the Company. The statute governing performance reviews expressly requires the Department to determine "whether the company failed to make all reasonable or prudent efforts." G.L. c. 164, § 94G(a). Consistent with Section 94(a), the Department determined in the Order that the Company's failure to estimate the useful life of the bearing lubricant and to develop an appropriate maintenance and replacement schedule was responsible for the crane bearing

failure that resulted in an extension of the outage. The Company was afforded a full opportunity to prove that its actions were reasonable and prudent despite its failure to achieve its performance targets. Thus, the Department has not held the Company to a standard of absolute liability, but rather to the precise standard set forth in the governing statute. Therefore, for the reasons stated above, reconsideration of the Department finding of Company imprudence regarding the reactor building crane failure is not warranted.

D. Refueling Bridge

1. Background

On June 26, 1991, during the process of removing a fuel bundle from the reactor to the spent fuel pool, the refueling bridge grapple opened unexpectedly and a fuel bundle was dropped. Order at 12, citing Exhs. BE-ESK-1, at 27; BE-ESK-54, at 2. The Company's investigation systematically rejected all but two possible causes of the incident: (1) an electrical transient, which might have caused a false signal in the grapple control system; and (2) "personnel interaction" (i.e., human error). Id., citing Exh. BE-ESK-1, at 27. The Company was not able to establish which of these two possible causes was the actual root cause of the incident. Id., citing Tr. 1, at 96-97. The incident resulted in a three-day extension of RFO-8. Id., citing Exh. BE-ESK-1, at 27.

In its Order, the Department rejected an electrical transient as a possible cause of the grapple's premature release, based on the absence of evidence that any electrical transient occurred at the time of the incident. Id. at 15. In the Order, the Department concluded that "personnel interaction" (i.e., operator error) was the only possible cause for the incident, because the Company testified that it was able to identify only two possible causes, an

electrical transient and "personnel interaction," and because the record supported elimination of one of these causes, an electrical transient. Id.

The Department further evaluated whether the incident resulted from reasonable and unavoidable difficulties at the man/machine interface, or simply from an error by the operator. Based on the evidence presented by the Company, the Department found that the man/machine interface was inherently "user friendly." Id. at 16. The Department also determined that there was no evidence that the error was unforeseeable or inevitable, or that it resulted from causes that were beyond the control of the Company and its employees. Id. at 15-17.

In the Order, the Department acknowledged that

> [n]ot every instance of human error that results in a forced outage or an extension of a planned outage is the result of unreasonable or imprudent behavior for which fault may be assigned. Erroneous actions may result from unforeseeable and unavoidable causes that are beyond human control (such as unexpected health problems). In such cases, the human error is without assignable fault .... (Order at 16).

The Department found "that when an outage or an extension of an outage is due to human error, and because it is in the best position to do so, the Company should bear the burden of proving that the error was unforeseeable and beyond the Company's control. If the Company does not adequately rebut this presumption, the Department will conclude that the action in question was imprudent." Order at 16-17. Based on the evidence, the Department concluded that the Company failed to rebut the presumption that the operator's error was a mistake and not beyond the Company's control and thus found imprudence. Id. at 17.

2. Company's Position

The Company challenges the Department's finding of imprudence regarding the dropped fuel bundle (Company Motion at 8). As with the reactor building crane bearing issue, the Company asserts that the Order does not identify the record evidence which supports the findings of imprudence (id. at 3, 9). The Company further maintains that the Department has held the Company to the "inappropriately high standard of absolute liability" (id. at 3).

The Company asserts that the Department's finding that an electrical transient was not the cause of the grapple's disengagement is not supported by the record (id. at 8, n.6). The Company also complains that the Department has established a standard imposing a presumption of imprudence, which creates an unfair burden on the Company (id. at 9).

3. Attorney General's Position

The Attorney General disagrees with the Company and maintains that the Department's finding of imprudence is fully supported by the record evidence (Attorney General Opposition at 6).

4. Analysis and Findings

The Company argues that (1) there is insufficient evidence to conclude whether an electrical transient or personnel interaction caused the fuel bundle to drop, and (2) the Department erred in placing a presumption of imprudence on the Company. Thus, the Company seeks reconsideration of the Department's finding of imprudence and clarification of the standard of review to which the Department has held the Company. The Department finds that the language in the Order regarding the standard of review is sufficiently ambiguous to leave doubt as to its meaning and thus warrants clarification.

As noted in Section II.C, if an electric company fails to meet system performance targets approved by the Department, the company must present evidence explaining such variance at the next fuel charge proceeding. G.L. c. 164, § 94G(a). The statute places the burden on the company of establishing the reasonableness of its actions and requires the Department to disallow recovery of replacement power costs if the company fails to sustain its burden of proof.

As a result of its investigation, the Company narrowed the possible causes of the actuation of the fuel grapple to either an electrical transient or personnel interaction. The Department's investigation found no evidence of electrical failure, i.e. that the monitoring devices calibrated to detect such a transient recorded none. Order at 15. Therefore, the Department determined that the Company had failed to demonstrate that the electrical transient was a plausible cause of the grapple's actuation. Id.

The Department also investigated personnel interaction as a cause of the fuel bundle drop. The Department noted that personnel interaction could be (1) a person/machine interface that has a design deficiency, (2) a human error that resulted from an unforeseeable or unavoidable cause that is beyond human control (such as an unexpected health problem) that is without assignable fault, or (3) human error that was simply a mistake for which the Company is liable. Id. at 16. The statute effectively places the burden of proof on the Company to establish that the personnel interaction was either (1) person/machine interface that has a design deficiency without assignable fault, or (2) human error without assignable fault. The Department's investigation of person/machine interface found no similar occurrences at Pilgrim or other reactors. Id. at 15. The Department concluded that the person/machine interface was inherently sound (i.e., sufficiently user-friendly). Id.

at 15, 16. Furthermore, the Company failed to present any evidence that human error resulted from an unforeseeable or unavoidable cause that is without assignable fault. Therefore, the Company failed to present any evidence to sustain its burden of proof that, based on what it knew or should have known at the time of the event, its actions were reasonable. The finding that the Company is responsible for the fuel bundle drop is based on the failure of the Company to sustain its statutory burden of proving that it acted reasonably -- not, as the Order suggested, based on its failure to overcome any presumption of imprudence. Accordingly, the Department's finding of imprudence regarding the Company's actions concerning the fuel bundle drop, which resulted in a three-day extension of RFO-8, is valid.

The Company also requested reconsideration of the Department's finding concerning the fuel bundle drop asserting that (1) the Department used an inappropriate standard of review and (2) there was insufficient evidence to support the Department's findings. Other than challenging the standard of review applied by the Department, which we addressed above, the Company has not presented any previously unknown or undisclosed facts or established any mistake or inadvertence. Therefore, reconsideration is not warranted.

IV. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, requesting clarification of the Department standard to which it is holding the Company in regards to the finding of imprudence in connection with the failure of the reactor building crane bearings be and hereby is granted, and it is

FURTHER ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, requesting clarification of the Department standard to which it is holding the Company in regards to the finding of imprudence in connection with the inadvertent actuation of the refueling bridge grapple be and hereby is granted, and it is

FURTHER ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, asserting that incorrect reading of the record relevant to the failure of the drywell head bolt washers led to miscalculation of the extension of the eighth refueling outage at Pilgrim in the Department's April 15, 1993 Order, be and hereby is denied, and it is

FURTHER ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, asserting that incorrect reading of the record relevant to the failure of the "A" heat exchanger led to miscalculation of the extension of the eighth refueling outage at Pilgrim in the Department's April 15, 1993 Order, be and hereby is denied, and it is

FURTHER ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, asserting that the Department's finding of imprudence in connection with the failure of the reactor building crane bearings is not supported by the record evidence, be and hereby is denied, and it is

FURTHER ORDERED: That the portion of the "Motion for Clarification and Reconsideration" filed by Boston Edison Company on May 3, 1993, asserting that the Department's finding of imprudence in connection with inadvertent actuation of the refueling bridge grapple is not supported by the record evidence, be and hereby is denied.

By Order of the Department,